

# IMBA

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April 6, 2005.

Mr. John Stevenson, Secretary,  
Ontario Securities Commission,  
20 Queen Street West,  
Suite 1900, Box 55,  
Toronto, Ontario, M5H 3S8. Telefax No: 416 - 593 - 2318

**RECEIVED**

APR - 8 2005

Ontario Securities Commission  
SECRETARY'S OFFICE

Dear Sir:

**RE: Proposed Changes to the Ontario Securities Commission  
Rules Concerning removing the exemption for the Syndication of Mortgages**

Further to our letter to you dated March 30, 2005, which has not yet been formally responded to by you, in writing, we wish to make some further comments concerning the above-noted.

It is our understanding that your Ministry has a statutory duty to prepare an anticipated cost and benefits analysis of the impact on the public when changes are contemplated under the Ontario Securities Commission (OSC) Rules. From the information available to us, there appears to be no evidence that you have considered the financial cost to Mortgage Brokers and any actual benefit to the public. If the exemption of syndicated mortgages is to be removed from the OSC Rules, before you do so, if you intend to consider doing so, it is our submission that you must first conduct a study to determine the cost to the mortgage broker, real estate and construction industry and a further study to determine if there is a true benefit to the public or if the change to the OSC rules will just result in unnecessary costs and barriers to a market place that will benefit no one.

As the OSC Rules would appear to consider two or more investors participating in a mortgage to be a syndicated mortgage, the financial cost for a Mortgage Broker to become a Limited Market Dealer in order to place more than two private investors into a syndicated mortgage would prove to be for the majority of Ontario Mortgage Brokers who syndicate, not financially feasible. Where a Mortgage Broker chooses to become a Limited Market Dealer, the public will not benefit as any additional costs associated with

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syndicating a mortgage will be passed down to the public (The Borrower). Another dilemma also arises for Mortgage Brokers who currently syndicate mortgages, if they must become Limited Market Dealers. As Limited Market Dealers can only deal with accredited investors, namely, an investor who has "financial assets" of at least \$1,000,000.00, subject to the limitations imposed by the OSC Rules or minimum income requirements, the majority of mortgage investors who choose to take a part of a syndicated mortgage, in order to spread their risk and minimize their exposure, these investors will be barred from the marketplace as they will not be able to qualify as an "accredited investor". It is also possible that the OSC could make a technical interpretation that an investment in a mortgage is not a security that will fall under what is named as "Financial Assets" to qualify as an "Accredited Investor". That is, as a mortgage is not a stock or bond or the type of security that OSC is accustomed to deal with, syndicated mortgages or ownership of a part of an existing mortgage may not fit into one of the named qualifying financial assets. Consequently, the investor who places \$1,000,000.00 in syndicated mortgages in one day, which cash is their only asset, may not be an accredited investor the next day. As that investor receives a principal payback from the mortgage investment, that investor loses the ability to re-invest in mortgages until at least \$1,000,000.00 in cash is re-accumulated, which could take years. For the two reasons named above, even if Ontario Mortgage Brokers who syndicate mortgages were prepared to become Limited Market Dealers to syndicate mortgages, there would be little reason for them to do so, as the majority of their investors are not accredited investors in the first instance and in the second instance could possibly lose their ability to qualify as accredited investors if they remained in syndicated mortgages. When the above is taken into consideration, it is probably fair to state that your Ministry may not have thought through the implications of the impact on the investor, mortgage broker, real estate and construction industries.

We also respectfully submit that there will also be a significant impact on the Borrowers (consumers) and the Ontario Economy if the mortgage syndication exemption rule is removed from the OSC Rules. If the OSC Rules are imposed on Mortgage Brokers who syndicate mortgages, as stated above, it is not likely that the majority of Brokers who syndicate mortgages will remain in business because of the financial cost to do so and from lack of accredited investors, that is, the small investor who is most likely to be an investor in syndicated mortgages. Those Brokers who do remain as Syndicators will be in a less competitive market, which will cost the Borrower (Public) significantly more. There will also be a flow through effect on the Ontario Economy if the majority of Brokers who syndicate mortgages and those investors who have traditionally participated, stop doing so

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because the mortgage broker syndicator can no longer afford to be in business if the majority of their investors are not accredited. There is a large part of the Ontario Real Estate Market that in many cases only exists because there are investors who are willing to be a part of a syndicated mortgage on properties that the institutional lender does not want to take as collateral. Outside of major cities, some real estate markets are only able to barely exist because of syndicated mortgages. If a Mortgage Broker cannot syndicate mortgages at a reasonable cost with the normal type of investor who participates in syndicated mortgages, as the majority of those investors would not be accredited in accordance with OSC rules, a part of the Ontario economy that is driven by Real Estate will suffer large financial losses. Many real estate transactions in Ontario only take place because of the financing provided by a syndicated mortgage. If this financing is no longer available, the number of property buyers is reduced, real estate values will fall and existing mortgage holders will experience losses if there are less buyers to sell to, due to the lack of financing from the syndication of mortgages as it currently exists. Since Institutional Lenders often shy away from areas serviced by mortgage syndication, it is not likely that they will step in to replace the void created if the majority of syndicator of mortgages and their clients are removed from the market place.

Dealing in mortgages is not the same as dealing in securities covered by the OSC. Mortgage investments are collateral with a specific property that can not disappear with a clearly defined value. The majority of Mortgage Brokers who syndicate and their investors would not be geared to handle OSC Rules. The activities of Mortgage Brokers who syndicate should be kept in the hands of those who are experienced, namely FSCO, not in the hands of those who have not had the experience of dealing with Mortgage Brokers.

The OSC after a study of what would happen to the syndicate mortgage industry and the cost to both investors and borrowers if the "Syndication Exemption" was removed from the current OSC Rule could only conclude that there would be no benefit gain. An analysis of the mortgage syndication industry should also conclude that the existing rules that apply to Mortgage Brokers who place private investors in mortgage investments under the Mortgage Brokers Act since they came into effect in 1992 have worked and will continue to work with the changes proposed under the proposed Mortgage Brokerage, Mortgage Lenders and Mortgage Administrators Act.

There is no cost benefit gain to borrowers, investors and Mortgage Brokers who syndicate mortgages. To oblige Mortgage Brokers who are Syndicators to be covered by two totally difference pieces of legislation and rules can only result in a less efficient marketplace.

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**There is no easy way for the OSC to reconcile their rules with the rules that govern Mortgage Brokers. It is not reasonable that Mortgage Brokers who syndicate mortgages should be governed by Two Masters.**

**In light of the above, we respectfully recommend that the "Exemption for Mortgage Syndicators" from the OSC Rules not be removed and we look forward to your favourable response.**

**Yours truly,**

**Independent Mortgage Brokers Association of Ontario,**



**Paul Bath, President**

**c.c. Mike Colle**

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